

1 JONATHAN B. COLE (SBN 70460)  
*jcole@nemecek-cole.com*  
2 MATTHEW J. HAFEY (SBN 167122)  
*mhafey@nemecek-cole.com*  
3 STEVE R. SEGURA (SBN 156834)  
*ssegura@nemecek-cole.com*  
4 NEMECEK & COLE, a Professional Corporation  
15260 Ventura Boulevard, Suite 920  
5 Sherman Oaks, California 91403-5344  
Telephone: (818) 788-9500  
6 Facsimile: (818) 501-0328

7 Attorneys for Plaintiff  
**JAMES RIVER INSURANCE COMPANY**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

12 JAMES RIVER INSURANCE  
COMPANY, an Ohio corporation,

**Plaintiff,**

-VS-

15 ERICKSON-HALL CONSTRUCTION  
16 CO., a California corporation; D.A.  
17 LEWIS CONSTRUCTION, INC., a  
18 California corporation; CITY OF  
CHULA VISTA, a Chartered  
Municipal Corporation and MT.  
19 HAWLEY INSURANCE COMPANY,  
an Illinois corporation

### Defendants.

**Case No.** '10CV2550 DMS BGS

## **COMPLAINT FOR:**

1. Rescission (Intentional Misrepresentation);
  2. Rescission (Negligent Misrepresentation);
  3. Declaratory Relief as to Duty to Defend (Rescission);
  4. Declaratory Relief as to Duty to Indemnify (Rescission);
  5. Declaratory Relief as to Duty to Defend (Policy Based Defenses);
  6. Declaratory Relief as to Duty to Indemnify (Policy Based Defenses);
  7. Declaratory Relief (Coverage under Mt. Hawley Policy)

24 Plaintiff JAMES RIVER INSURANCE COMPANY (“JRIC”) for its Complaint  
25 against the above-named defendants, upon knowledge, information and belief, alleges  
26 as follows:

27       1. This is an action by JRIC for rescission arising out of material  
28 misrepresentations and/or omissions of its insureds in an Application for a Commercial

1 General Liability Insurance, Policy Number 00038296-0, effective 06/07/2009 to  
 2 06/07/2010 with limits of insurance of \$1,000,000.00 per claim and \$2,000,000.00 in  
 3 the aggregate (the “Policy”), a copy of which is attached hereto as Exhibit “A” and  
 4 incorporated herein by this reference. In this action, JRIC seeks a judgment  
 5 confirming its rescission of the Policy and a declaration by this Court pursuant to 28  
 6 U.S.C. §§ 2201 and 2202 that JRIC has no duty to defend or indemnify its insureds  
 7 concerning land subsidence claims arising from the construction of improvements to a  
 8 public playground area located at the Mount San Miguel Community Park in Chula  
 9 Vista, California.

10 **JURISDICTION AND VENUE**

11 2. The Court has jurisdiction over this action pursuant to 28 U.S.C.  
 12 § 1332(a)(1). There is complete diversity of citizenship between plaintiff and  
 13 defendants and the amount in controversy exceeds the sum of \$75,000, exclusive of  
 14 interest and costs. An actual controversy within the meaning of 28 U.S.C. § 2201 also  
 15 exists between the parties.

16 3. Venue is proper pursuant to 28 U.S.C. § 1391, in that a substantial part of  
 17 events giving rise to this action occurred in the this district and defendants in this  
 18 action reside in this district.

19 **PARTIES**

20 4. At all relevant times herein, JRIC was a corporation organized under the  
 21 laws of the State of Ohio whose principal place of business is located in Richmond,  
 22 Virginia. JRIC is an insurance company authorized to transact business in California  
 23 on a non-admitted basis as an Excess and Surplus Lines carrier.

24 5. JRIC is informed and believes and thereon alleges that  
 25 ERICKSON-HALL CONSTRUCTION CO. (“ERICKSON-HALL”) is a corporation  
 26 organized and existing under the laws of the State of California whose principal place  
 27 of business is located in the County of San Diego, State of California.

28 / / /

1       6.     JRIC is informed and believes and thereon alleges that D. A. LEWIS  
2 CONSTRUCTION, INC. (“D. A. LEWIS”) is a corporation organized and existing  
3 under the laws of the State of California whose principal place of business is located in  
4 the County of San Diego, State of California.

5       7.     JRIC is informed and believes and thereon alleges that the City of Chula  
6 Vista (“CHULA VISTA”) is chartered municipal corporation organized and existing  
7 under the laws of the State of California and is located in the County of San Diego,  
8 State of California.

9        8.      JRIC is informed and believes that Mt. Hawley Insurance Company  
10 ("MT. HAWLEY") is an entity organized and existing under the laws of the State of  
11 Illinois with its principal place of business in Peoria, Illinois, and is a surplus lines  
12 insurer identified on California's List of Eligible Surplus Lines Insurers (LESLI) and  
13 conducts business within the State of California. JRIC is informed and believes that  
14 MT. HAWLEY issued Commercial General Liability insurance policies to D. A.  
15 LEWIS: (1) Policy Number MGL0151752, effective 06/07/07 to 06/07/08; and (2)  
16 Policy Number MGL0154812, effective 6/07/08 to 6/07/09. JRIC is informed and  
17 believes that MT. HAWLEY issued Excess Insurance policies to D. A. LEWIS: (1)  
18 Policy Number MXL0364922, effective 06/07/07 to 06/07/08; and (2) Policy Number  
19 MXL0367017, effective 6/07/08 to 6/07/09.

## **FACTUAL ALLEGATIONS**

21       9. On April 27, 2009, D. A. LEWIS completed an ACORD Application for  
22 Commercial General Liability Insurance Policy (the “Application”) for submission to  
23 JRIC. In the Application, D. A. LEWIS lists its nature of business/description of  
24 operations as “[c]onstruction of metal awnings and prefab shade for parks and rec. for  
25 municipalities, schools” and describes its products/completed operations as “metal  
26 erection.”

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1       10. In the Application's "CONTRACTORS" section, D. A. LEWIS answered  
 2 "NO" to question 3: "DO ANY OPERATIONS INCLUDE EXCAVATION,  
 3 TUNNELING, UNDERGROUND WORK OR EARTH MOVING?"

4       11. In the Application's CONTRACTORS QUESTIONNAIRE section, D. A.  
 5 LEWIS answered "No" to question 32: "Have you performed or will you or your  
 6 contractors perform any work below grade?"

7       12. The questionnaire states: "WARRANTY: The purpose of the  
 8 supplemental questionnaire is to assist in the underwriting process. Information  
 9 contained herein is specifically relied upon in determination of insurability. The  
 10 undersigned therefore warrants that the information contained herein (consisting of  
 11 five pages) is true and accurate to the best of his knowledge, information and belief.  
 12 The Supplemental Questionnaire and the application to which it is appended, shall be  
 13 the basis of any insurance policy that maybe issued and will be part of such policy."

14       13. In reliance on the Application, JRIC issued the Policy to Named Insured  
 15 D. A. LEWIS.

16       14. JRIC is informed and believes that CHULA VISTA hired ERICKSON-  
 17 HALL to construct improvements to a public playground area in the Mount San  
 18 Miguel Community Park located in the City of Chula Vista, California (the "Project").

19       15. JRIC is informed and believes that on or about December 5, 2008,  
 20 ERICKSON-HALL entered into a subcontract with D. A. LEWIS requiring D.A.  
 21 LEWIS to furnish and install playground equipment at the Project. The subcontract  
 22 required, among other things, that D. A. LEWIS install a FIBAR drain system and play  
 23 area equipment, including "concrete, reinforcing, excavation, backfill and compaction,  
 24 etc. as required for a complete installation." JRIC is informed and believes that D. A.  
 25 LEWIS worked on the Project pursuant to the subcontract, including, but not limited  
 26 to, installation of the FIBAR drain system and performed the necessary excavation,  
 27 backfill and compaction required for the equipment's installation. None of these

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1 operations were within the scope of operations described by D.A. LEWIS when it  
2 applied for the Policy with JAMES RIVER.

3       16. In light of the facts and circumstances surrounding the subcontract  
4 between ERICKSON-HALL and D. A. LEWIS, as well as the actual work performed  
5 at the Project by D. A. LEWIS, JRIC is informed and believes that the representations  
6 made by D. A. LEWIS in the Application were not true and were not disclosed to JRIC  
7 prior to the issuance of the Policy. Had JRIC known the true facts, JRIC would have  
8 either (a) not written the Policy at all; (b) charged a higher premium; or (c) offered  
9 terms with different endorsements and/or sublimits appropriate to the risk.

10      17. JRIC is informed and believes that after D. A. LEWIS completed its work  
11 on the Project, CHULA VISTA alleged that ERICKSON-HALL's work at the Project,  
12 including the playground area, was defective, and experienced significant earth  
13 movement and subsidence issues causing extensive damage to nearby concrete  
14 flatwork and a post and rail fence and requiring significant remediation.

15      18. JRIC is informed and believes that without first obtaining the approval of  
16 JRIC or any other insurer for D.A. LEWIS, ERICKSON-HALL subsequently hired a  
17 geotechnical consultant to evaluate the cause of the land subsidence and to prepare a  
18 subsurface geotechnical evaluation of the playground where the distress and settlement  
19 occurred. The consultant's report states that the land subsidence resulted from soft  
20 organic clay at the bottom of fill materials, poorly compacted fill materials and the  
21 introduction of storm water or other water sources into the fill mass. ERICKSON-  
22 HALL has alleged that the cost of repair and remediation is approximately  
23 \$394,285.60.

24      19. JRIC is informed and believes that CHULA VISTA asserted a claim for  
25 damages against ERICKSON-HALL arising from the land subsidence issues at the  
26 Project's location, and that ERICKSON-HALL undertook those repairs without the  
27 consent of D.A. LEWIS' insurers.

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1       20. On or about July 30, 2010, ERICKSON-HALL tendered the claim to  
2 JRIC, contending that it is an additional insured under the Policy and requesting  
3 indemnification for CHULA VISTA's claim.

4       21. On or about August 18, 2010, JRIC declined coverage for the claim.  
5 After conducting additional investigation and facts presented by ERICKSON-HALL,  
6 JRIC reiterated its coverage denial by letters dated October 7, 2010 and November 3,  
7 2010.

## **First Claim for Relief**

**For Rescission Against D. A. LEWIS Due to Intentional Misrepresentations  
and/or Omissions by the Insured in an Application for Insurance**

11        22. JRIC repeats and incorporates by reference the allegations in paragraphs 1  
12 through 21, inclusive, of this Complaint.

13       23. As an inducement for JRIC to issue the Policy to D. A. LEWIS, on or  
14 about April 27, 2009, D. A. LEWIS made certain warranties and representations in  
15 writing in the Application and submitted the Application to JRIC through its insurance  
16 broker for JRIC's consideration.

17       24. The warranties and representations made by D. A. LEWIS in the  
18 Application were false. Among other things not disclosed on the Application were the  
19 true nature of its business operations and work performed, which JRIC specifically  
20 inquired about in questions on the Application and which should have been truthfully  
21 disclosed by D. A. LEWIS as part of the Application process, as JRIC did not know  
22 and had no means of knowing the same prior to the time that the Application was  
23 submitted to JRIC.

24        25. At the time that D. A. LEWIS made these misrepresentations and/or  
25 omissions on the Application, it knew that said representations were false and intended  
26 that JRIC would rely thereon to induce JRIC to issue the Policy to D. A. LEWIS.

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1       26. These misrepresentations and/or omissions were material to the risk  
 2 undertaken by JRIC when it issued the Policy, in that had JRIC known the true facts,  
 3 JRIC would have either (a) not written the Policy at all; (b) charged a higher premium;  
 4 or (c) offered terms with different endorsements and/or sublimits appropriate to the  
 5 risk.

6       27. JRIC actually relied on the truth of the representations made by D. A.  
 7 LEWIS in the Application when it agreed to issue the Policy. JRIC's reliance was  
 8 reasonable and justified in that it had no reason to doubt its insured's representations  
 9 and warranties and that its insured was in the best position to provide truthful  
 10 information on said Application.

11       28. D. A. LEWIS also had a statutory duty under California Insurance Code  
 12 Section 332 to "communicate to [JRIC], in good faith, all facts within [their]  
 13 knowledge which are or which [they] believe[d] to be material to the contract and as to  
 14 which [they] makes no warranty, and which [JRIC] ha[d] not the means of  
 15 ascertaining." As such, JRIC is entitled to rescind the Policy pursuant to, among other  
 16 things, California Insurance Code Section 331, which is effective as to all Insureds  
 17 pursuant to California Insurance Code Section 650.

18       29. JRIC hereby rescinds the Policy and offers to return any premium paid by  
 19 D. A. LEWIS to JRIC. The grounds for such rescission are the material  
 20 misrepresentations and/or omissions made by D. A. LEWIS in the Application, as set  
 21 forth above.

22       30. As a direct and proximate result of the misrepresentations and/or  
 23 omissions of D. A. LEWIS in the Application, JRIC was induced to issue the Policy  
 24 and through this Action seeks a declaratory judgment by this Court that the Policy has  
 25 been rescinded pursuant to California Civil Code Section 1692.

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## **Second Claim for Relief**

**For Rescission Against D. A. LEWIS Due to Negligent Misrepresentations and/or  
Omissions by the Insured in an Application for Insurance**

4       31. JRIC repeats and incorporates by reference the allegations in paragraphs 1  
5 through 21, inclusive, and 23 through 30, inclusive, of this Complaint.

6       32. JRIC is informed and believes that when D. A. LEWIS made the  
7 misrepresentations and/or failed to disclose facts in the Application, as described  
8 above, which were positive assertions as to past and existing facts, they were false, that  
9 D. A. LEWIS had no reasonable ground for believing the representations and/or  
10 omissions to be true, and that D. A. LEWIS was aware that it could not accurately  
11 make these representations and in fact knew that they would be material to the risk. At  
12 the time the representations were made, and at all times thereafter, D. A. LEWIS  
13 concealed from JRIC, the true facts and D. A. LEWIS's inability to accurately make  
14 the representations.

15        33. JRIC is informed and believes that D. A. LEWIS made these  
16 representations with the intention of inducing JRIC to act in reliance on these  
17 representations when it issued the Policy, or with the expectation that JRIC would so  
18 act.

19       34. JRIC was ignorant of the falsity of D. A. LEWIS's representations and/or  
20 omissions and believed them to be true and relied upon them to JRIC's detriment.  
21 Among other detrimental acts of reliance, of which D. A. LEWIS was and is aware,  
22 JRIC was induced to issue the Policy. Had JRIC known the truth, JRIC would have  
23 either (a) not written the Policy at all; (b) charged a higher premium; or (c) offered  
24 terms with different endorsements and/or sublimits appropriate to the risk.

25       35. JRIC hereby rescinds the Policy and offers to return any premium paid by  
26 D. A. LEWIS to JRIC. The grounds for such rescission are the material  
27 misrepresentations and/or omissions made by D. A. LEWIS in the Application as set  
28 forth above.

1       36. As a direct and proximate result of the misrepresentations and/or  
2 omissions of D. A. LEWIS in the Application, JRIC was induced to issue the Policy  
3 and through this Action seeks a declaratory judgment by this Court that the Policy has  
4 been rescinded pursuant to California Civil Code Section 1692.

### **Third Claim for Relief**

**JRIC Is Entitled to a Judicial Declaration Against all Defendants That JRIC Does Not Have a Duty to Defend (Rescission)**

8       37. JRIC repeats and incorporates by reference the allegations in paragraphs 1  
9 through 21, inclusive, 23 through 30, inclusive, and 32 through 36, inclusive, of this  
10 Complaint.

11       38. JRIC contends that as a result of its rescission of the Policy, the Policy is  
12 void *ab initio* and JRIC has no duty to defend, and has never had a duty to defend  
13 ERICKSON-SCOTT, D. A. LEWIS, and CHULA VISTA as to any and all claims  
14 concerning, arising from or related to the land subsidence issues at the Mount San  
15 Miguel Community Park, described hereinabove.

16       39. A true and present controversy exists between JRIC, on the one hand, and  
17 Defendants on the other, in that JRIC contends that it is entitled to rescind the Policy  
18 based on the material misrepresentations and/or omissions of D. A. LEWIS in the  
19 Application as to all Insureds pursuant to California Insurance Code sections 331 and  
20 650, among other things. JRIC is informed and believes that Defendants contend  
21 otherwise.

22        40. A judicial determination is necessary to determine the respective rights of  
23 the parties hereto pursuant to the terms, conditions, exclusions and endorsements of the  
24 Policy and the Application.

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## **Fourth Claim for Relief**

**JRIC Is Entitled to a Judicial Declaration Against all Defendants That JRIC Does Not Have a Duty to Indemnify (Rescission)**

4        41.    JRIC repeats and incorporates by reference the allegations in paragraphs 1  
5 through 21, inclusive, 23 through 30, inclusive, 32 through 36, inclusive and 38  
6 through 40, inclusive of this Complaint.

7       42.     JRIC contends that as a result of its rescission of the Policy, the Policy is  
8 void *ab initio* and JRIC has no duty to indemnify ERICKSON-SCOTT, D. A. LEWIS,  
9 and CHULA VISTA as to any and all claims concerning, arising from or related to the  
10 land subsidence issues at the Mount San Miguel Community Park, described  
11 hereinabove.

12       43. A true and present controversy exists between JRIC, on the one hand, and  
13 Defendants on the other, in that JRIC contends that it is entitled to rescind the Policy  
14 based on the material misrepresentations and/or omissions of D. A. LEWIS in the  
15 Application as to all Insureds pursuant to California Insurance Code sections 331 and  
16 650, among other things. JRIC is informed and believes that Defendants contend  
17 otherwise.

18        44. A judicial determination is necessary to determine the respective rights of  
19 the parties hereto pursuant to the terms, conditions, exclusions and endorsements of the  
20 Policy and the Application.

## **Fifth Claim for Relief**

**JRIC Is Entitled to a Judicial Declaration Against all Defendants as to JRIC's Duty to Defend (Policy Based Defenses)**

24       45. JRIC repeats and incorporates by reference the allegations in paragraphs 1  
25 through 21, inclusive, of this Complaint.

26       46. A true and present controversy exists between JRIC, on the one hand, and  
27 Defendants on the other, in that JRIC contends that regardless of the rescission issue,  
28 there is no coverage or potential for coverage (and therefore no duty to defend) as to

1 any and all claims concerning, arising from, or related to the land subsidence issues at  
 2 the Mount San Miguel Community Park, described hereinabove, for the following  
 3 reasons, among other things:

- 4       a.     No “Suit” has been filed;
- 5       b.     The Subsidence Exclusion precludes coverage for "*any liability for  
                  ‘Bodily Injury’, ‘Personal and Advertising Injury’, or ‘Property damage’,  
                  or to loss of, damage to, or loss of property, directly or indirectly arising  
                  out of, caused by, resulting from, contributed to or aggravated by the  
                  subsidence, settling, sinking, slipping, falling away, caving in, shifting,  
                  eroding, mud flow, rising, tilting, bulging, cracking, shrinking or  
                  expansion of foundations, walls, roofs, floors, or ceilings, or any other  
                  movements of land or earth, regardless of whether the foregoing emanates  
                  from, or is attributable to, any operations performed by or on behalf of  
                  any insured. The foregoing applies regardless of whether the first  
                  manifestation of same occurs during the policy period or prior or  
                  subsequent thereto;*"
- 17      c.     The Underground Facility Exclusion precludes coverage for  
                 "*'underground property damage' arising out of the failure to take  
                  ‘appropriate’ steps, in advance of any job or work commencing, to locate,  
                  identify or mark any ‘underground facility’;*"
- 21      d.     The Classification Limitation Exclusion states: "*The coverage provided by  
                  this policy applies only to those operations specified in the applications(s)  
                  for insurance on file with the Company and described under the  
                  description of operations or classification on the declarations of the  
                  policy;*"
- 26      e.     The Claims in Progress Exclusion precludes coverage for "*bodily injury’,  
                  ‘personal and advertising injury’ or ‘property damage’ which begins or  
                  takes place before the inception date of coverage, whether such ‘bodily*

1           *'injury', 'personal and advertising injury' or 'property damage' is known  
 2 to an insured, even though the nature and extent of such damage or injury  
 3 may change and even though the damage may be continuous, progressive,  
 4 cumulative, changing or evolving, and even though the 'occurrence'  
 5 causing such 'bodily injury', 'personal and advertising injury' or  
 6 'property damage' may be or may involve a continuous or repeated  
 7 exposure to substantially the same general harm;'*

8 f. The "Work Product" and "Your Work" Exclusions preclude coverage for:

9           *"j.     Damage To Property*

10           *'Property damage' to:*

11           *\* \* \**

12           *(5)    That particular part of real property on which you or any  
 13 contractors or subcontractors working directly or indirectly  
 14 on your behalf are performing operations, if the 'property  
 15 damage' arises out of those operations; or*

16           *(6)    That particular part of any property that must be restored,  
 17 repaired or replaced because because 'your work' was  
 18 incorrectly performed on it.*

19           *k.     Damage To Your Product*

20           *'Property damage' to 'your product' arising out of it or any part of  
 21 it.*

22           *l.     Damage To Your Work*

23           *'Property damage' to 'your work' arising out of it or any part of it  
 24 and included in the 'products completed operations hazard'.*

25           *m.    Damage To Impaired Property Or Property Not Physically Injured*

26           *'Property damage' to 'impaired property' or property that has not  
 27 been physically injured, arising out of:*

- (1) *A defect, deficiency, inadequacy or dangerous condition in ‘your product’ or ‘your work’; or*
  - (2) *A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms. This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to ‘your product’ or ‘your work’ after it has been put to its intended use.*

*n. Recall Of Products, Work Or Impaired Property*

*Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:*

- (1) ‘Your product’;
  - (2) ‘Your work’; or
  - (3) ‘Impaired property’;

*if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it;”*

g. Exclusion m(1) precludes coverage for “‘Property damage’ to ‘impaired property’ or property that has not been physically injured, arising out of . . . [a] defect, deficiency, inadequacy or dangerous condition in ‘your product’ or ‘your work’;”

h. Exclusion n(1) precludes coverage for “‘*Property damage*’ to ‘*impaired property*’ or *property that has not been physically injured, arising out of:*  
(1) *A defect, deficiency, inadequacy or dangerous condition in ‘your product’ or ‘your work’;*”

- 1           i. The Policy's Additional Insured Endorsement (form CG 20 10) precludes  
 2 coverage to additional insureds for “*‘property damage’ occurring after:*  
 3           1. *All work, including materials, parts or equipment furnished in*  
 4 *connection with such work, on the project (other than service,*  
 5 *maintenance or repairs) to be performed by or on behalf of the*  
 6 *additional insured(s) at the location of the covered operations has*  
 7 *been completed; or*  
 8           2. *That portion of ‘your work’ out of which the injury or damage*  
 9 *arises has been put to its intended use by any person or*  
 10 *organization other than another contractor or subcontractor*  
 11 *engaged in performing operations for a principal as a part of the*  
 12 *same project;”*
- 13           j. The Policy's Additional Insured Endorsement (form CG 20 37 ) only  
 14 afford coverage to additional insureds “*with respect to liability for ‘bodily*  
 15 *injury’ or ‘property damage’ caused, in whole or in part, by ‘your work’*  
 16 *at the location designated and described in the schedule of this*  
 17 *endorsement performed for that additional insured and included in the*  
 18 *‘products-completed operations hazard’;” and*
- 19           k. Exclusion b precludes coverage for “*‘Bodily injury’ or ‘property damage’*  
 20 *for which the insured is obligated to pay damages by reason of the*  
 21 *assumption of liability in a contract or agreement;”*
- 22          47. JRIC is informed and believes and thereon alleges that the subcontract  
 23 which ERICKSON-HALL drafted and D.A. LEWIS signed requires D.A. LEWIS to  
 24 provide Additional Insured status to ERICKSON-HALL and CHULA VISTA “during  
 25 the term of this Agreement,” and that once D.A. LEWIS completed its work at the  
 26 Project the “term” of the subcontract ended, which also ended D.A. LEWIS’ obligation  
 27 to provide Additional Insured status to ERICKSON-HALL and CHULA VISTA.
- 28

1       48. JRIC is informed and believes and thereon alleges that other terms,  
2 conditions, exclusions and endorsements in the Policy operate to preclude coverage  
3 and therefore eliminate any duty to defend any and all claims concerning, arising from  
4 or related to, the land subsidence issues at the Mount San Miguel Community Park,  
5 described hereinabove.

6       49.     JRIC is informed and believes and thereon alleges that Defendants  
7 contend otherwise.

8        50. A judicial determination is necessary to determine the respective rights of  
9 the parties hereto pursuant to the terms, conditions, exclusions and endorsements of the  
10 Policy and the Application.

## Sixth Claim for Relief

**JRIC Is Entitled to a Judicial Declaration Against all Defendants as to JRIC's  
Duty to Indemnify (Policy Based Defenses)**

14        51.    JRIC repeats and incorporates by reference the allegations in paragraphs 1  
15 through 21, inclusive, of this Complaint.

16        52. A true and present controversy exists between JRIC, on the one hand, and  
17 Defendants on the other, in that JRIC contends that regardless of the rescission issue,  
18 there is no actual coverage (and therefore no duty to indemnify) for any and all claims  
19 concerning, arising from, or related to the land subsidence issues at the Mount San  
20 Miguel Community Park, described hereinabove, for the following reasons, among  
21 other things:

22       a. The Subsidence Exclusion precludes coverage for “*any liability for*  
23           ‘*Bodily Injury*’, ‘*Personal and Advertising Injury*’, or ‘*Property damage*’,  
24           *or to loss of, damage to, or loss of property, directly or indirectly arising*  
25           *out of, caused by, resulting from, contributed to or aggravated by the*  
26           *subsidence, settling, sinking, slipping, falling away, caving in, shifting,*  
27           *eroding, mud flow, rising, tilting, bulging, cracking, shrinking or*  
28           *expansion of foundations, walls, roofs, floors, or ceilings, or any other*

*movements of land or earth, regardless of whether the foregoing emanates from, or is attributable to, any operations performed by or on behalf of any insured. The foregoing applies regardless of whether the first manifestation of same occurs during the policy period or prior or subsequent thereto;”*

- b. The Underground Facility Exclusion precludes coverage for “*‘underground property damage’ arising out of the failure to take ‘appropriate’ steps, in advance of any job or work commencing, to locate, identify or mark any ‘underground facility’;*”
  - c. The Classification Limitation Exclusion states: “*The coverage provided by this policy applies only to those operations specified in the applications(s) for insurance on file with the Company and described under the description of operations or classification on the declarations of the policy;*”
  - d. The Claims in Progress Exclusion precludes coverage for “*‘bodily injury’, ‘personal and advertising injury’ or ‘property damage’ which begins or takes place before the inception date of coverage, whether such ‘bodily injury’, ‘personal and advertising injury’ or ‘property damage’ is known to an insured, even though the nature and extent of such damage or injury may change and even though the damage may be continuous, progressive, cumulative, changing or evolving, and even though the ‘occurrence’ causing such ‘bodily injury’, ‘personal and advertising injury’ or ‘property damage’ may be or may involve a continuous or repeated exposure to substantially the same general harm;*”
  - e. The “Work Product” and “Your Work” Exclusions preclude coverage for:
    - “j. *Damage To Property*  
*‘Property damage’ to:*

\* \* \*

- (5) *That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the ‘property damage’ arises out of those operations; or*
  - (6) *That particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it.*

*k. Damage To Your Product*

*'Property damage' to 'your product' arising out of it or any part of it.*

#### *l. Damage To Your Work*

*'Property damage' to 'your work' arising out of it or any part of it and included in the 'products completed operations hazard'.*

*m. Damage To Impaired Property Or Property Not Physically Injured*

*'Property damage' to 'impaired property' or property that has not been physically injured, arising out of:*

- (1) *A defect, deficiency, inadequacy or dangerous condition in ‘your product’ or ‘your work’; or*
  - (2) *A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms. This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to ‘your product’ or ‘your work’ after it has been put to its intended use.*

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1           n. *Recall Of Products, Work Or Impaired Property*

2           *Damages claimed for any loss, cost or expense incurred by you or  
3           others for the loss of use, withdrawal, recall, inspection, repair,  
4           replacement, adjustment, removal or disposal of:*

5                 (1)    *'Your product';*

6                 (2)    *'Your work'; or*

7                 (3)    *'Impaired property';*

8           *if such product, work, or property is withdrawn or recalled from the  
9           market or from use by any person or organization because of a known or  
10          suspected defect, deficiency, inadequacy or dangerous condition in it;"*

11          f. Exclusion m(1) precludes coverage for "*'Property damage' to 'impaired  
12          property' or property that has not been physically injured, arising out  
13          of... [a] defect, deficiency, inadequacy or dangerous condition in 'your  
14          product' or 'your work';"*

15          g. Exclusion n(1) precludes coverage for "*'Property damage' to 'impaired  
16          property' or property that has not been physically injured, arising out of:  
17          (1) A defect, deficiency, inadequacy or dangerous condition in 'your  
18          product' or 'your work';"*

19          h. The Policy's Additional Insured Endorsement (form CG 20 10) precludes  
20          coverage to additional insureds for "*"property damage" occurring after:*

21                 1. *All work, including materials, parts or equipment furnished in  
22                 connection with such work, on the project (other than service,  
23                 maintenance or repairs) to be performed by or on behalf of the  
24                 additional insured(s) at the location of the covered operations has  
25                 been completed; or*

26                 2. *That portion of 'your work' out of which the injury or damage  
27                 arises has been put to its intended use by any person or  
28                 organization other than another contractor or subcontractor*

*engaged in performing operations for a principal as a part of the same project;”*

- i. The Policy's Additional Insured Endorsement (form CG 20 37 ) only afford coverage to additional insureds “*with respect to liability for ‘bodily injury’ or ‘property damage’ caused, in whole or in part, by ‘your work’ at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the ‘products-completed operations hazard’;*” and
  - j. Exclusion b precludes coverage for “‘Bodily injury’ or ‘property damage’ for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.”

12        53.    JRIC is informed and believes and thereon alleges that the subcontract  
13 which ERICKSON-HALL drafted and D.A. LEWIS signed requires D.A. LEWIS to  
14 provide Additional Insured status to ERICKSON-HALL and CHULA VISTA “during  
15 the term of this Agreement,” and that once D.A. LEWIS completed its work at the  
16 Project the “term” of the subcontract ended, which also ended D.A. LEWIS’ obligation  
17 to provide Additional Insured status to ERICKSON-HALL and CHULA VISTA.

18        54.     JRIC is informed and believes and thereon alleges that other terms,  
19 conditions, exclusions and endorsements in the Policy operate to preclude coverage  
20 and therefore eliminate any duty to indemnify with regard to any and all claims  
21 concerning, arising from, or related to the land subsidence issues at the Mount San  
22 Miguel Community Park, described hereinabove.

23        55. JRIC is informed and believes and thereon alleges that Defendants  
24 contend otherwise.

25 // /

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56. A judicial determination is necessary to determine the respective rights of  
the parties hereto pursuant to the terms, conditions, exclusions and endorsements of the  
Policy and the Application.

## **Seventh Claim for Relief**

**JRIC Is Entitled to a Judicial Declaration Against all Defendants that Coverage is  
Afforded, if at All, by the Mt. Hawley Policy**

7       57.    JRJC repeats and incorporates by reference the allegations in paragraphs 1  
8 through 21, inclusive, of this Complaint.

9       58. A true and present controversy exists between JRIC, on the one hand, and  
10 Defendants on the other, in that JRIC contends that regardless of the rescission issue,  
11 there is no actual coverage (and therefore no duty to indemnify) for any and all claims  
12 concerning, arising from, or related to the land subsidence issues at the Mount San  
13 Miguel Community Park, by reason of the fact that the “Property damage,” if any,  
14 happened prior to the JRIC Policy period.

15        59. JRIC is informed and believes and thereon alleges that, concurrently with  
16 its tender to JRIC, ERICKSON-HALL also tendered CHULA VISTA’s claim to MT.  
17 HAWLEY pursuant to Commercial General Liability Insurance Policy No.  
18 MGL0154812, which was in force and effect from 06/07/08 to 06/07/09. JRIC is  
19 further informed and believes and thereon alleges that the “Property damage” being  
20 complained of by CHULA VISTA occurred during the MT. HAWLEY Policy period,  
21 and that if any insurance policy issued to D.A. LEWIS even potentially covers the  
22 “Property damage” to the Project, it should be the MT. HAWLEY Policy.

23       60. JRIC does not currently have a copy of the MT. HAWLEY Policy, but is  
24 informed and believes that it contains the standard CG 00 01 General Liability form  
25 and that MT. HAWLEY does not enjoy the same coverage defenses as JRIC. JRIC  
26 will seek leave to amend its Complaint upon discovery of the terms and conditions of  
27 the MT. HAWLEY Policy.

28 |||

1       61.     JRIC is informed and believes and thereon alleges that the subcontract  
2 which ERICKSON-HALL drafted and D.A. LEWIS signed requires D.A. LEWIS to  
3 provide Additional Insured status to ERICKSON-HALL and CHULA VISTA “during  
4 the term of this Agreement,” and that D.A. LEWIS performed its operations at the  
5 Project while the Mt. HAWLEY Policy was in force and effect. JRIC is further  
6 informed and believes that pursuant to the subcontract D.A. LEWIS was therefore  
7 obligated to provide Additional Insured status to ERICKSON-HALL and CHULA  
8 VISTA under the MT. HAWLEY Policy.

9       62. In the event that the Court finds coverage under the JRIC Policy, JRIC is  
10      entitled to equitable subrogation from MT. HAWLEY.

11       63. JRIC is informed and believes and thereon alleges that Defendants  
12 contend otherwise.

13        64. A judicial determination is necessary to determine the respective rights of  
14 the parties hereto pursuant to the terms, conditions, exclusions and endorsements of the  
15 MT. HAWLEY Policy.

## PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff JRIC requests that the Court enter judgment in its  
19 favor:

**20 | ON THE FIRST AND SECOND CLAIMS FOR RELIEF**

A. For a judgment that the Policy has been rescinded;

## **22 | ON THE THIRD CLAIM FOR RELIEF**

23 B. For a judicial declaration as to all defendants that the Policy has been  
24 rescinded and therefore is void *ab initio*;

25 C. For judicial declaration that there is no coverage or potential for coverage  
26 for any and all claims concerning, arising from, or related to the land subsidence issues  
27 at the Mount San Miguel Community Park, described hereinabove, under the Policy by  
28 reason of JRIC's rescission of the Policy, and therefore that JRIC does not and never

1 did have a duty to defend Defendants with regard to any and all claims concerning,  
2 arising from, or related to the land subsidence issues at the Mount San Miguel  
3 Community Park, described hereinabove;

4 **ON THE FOURTH CLAIM FOR RELIEF**

5 D. A judicial declaration as to all defendants that the Policy has been  
6 rescinded and therefore is void *ab initio*;

7 E. A judicial declaration as to all defendants that there is no coverage for any  
8 and all claims concerning, arising from, or related to the land subsidence issues at the  
9 Mount San Miguel Community Park, described hereinabove, under the Policy by  
10 reason of JRIC's rescission of the Policy, and therefore that JRIC does not and never  
11 did have a duty to indemnify Defendants with regard to any and all claims concerning,  
12 arising from, or related to the land subsidence issues at the Mount San Miguel  
13 Community Park, described hereinabove;

14 **ON THE FIFTH CLAIM FOR RELIEF**

15 F. A judicial declaration as to the rights and duties of the parties as to JRIC's  
16 duty to defend any and all claims concerning, arising from, or related to the land  
17 subsidence issues at the Mount San Miguel Community Park, described hereinabove,  
18 pursuant to the terms, conditions, exclusions and endorsements of the Policy;

19 **ON THE SIXTH CLAIM FOR RELIEF**

20 G. A judicial declaration as to the rights and duties of the parties as to JRIC's  
21 duty to indemnify as it relates to any and all claims concerning, arising from, or related  
22 to the land subsidence issues at the Mount San Miguel Community Park, described  
23 hereinabove, pursuant to the terms, conditions, exclusions and endorsements of the  
24 Policy;

25 **ON THE SEVENTH CLAIM FOR RELIEF**

26 G. A judicial declaration as to the rights and duties of the parties as to MT.  
27 HAWLEY's duty to defend or indemnify as it relates to any and all claims concerning,  
28 arising from, or related to the land subsidence issues at the Mount San Miguel

1 Community Park, described hereinabove, pursuant to the terms, conditions, exclusions  
2 and endorsements of the MT. HAWLEY Policy;

3 H. A judicial declaration that in the event that the Court finds coverage under  
4 the JRIC Policy, JRIC is entitled to equitable subrogation from MT. HAWLEY.

5 **ON ALL CLAIMS FOR RELIEF**

6 I. For interest and costs according to proof; and

7 J. For such additional declaratory and other relief as shall be found to be  
8 appropriate under the circumstances.

9  
10 Dated: December 13, 2010 Respectfully Submitted,

11 NEMECEK & COLE

12  
13 By \_\_\_\_\_ /s/ Jonathan B. Cole  
14 JONATHAN B. COLE  
15 MATTHEW J. HAFETY  
STEVE R. SEGURA  
16 Attorneys for Plaintiff JAMES RIVER  
INSURANCE COMPANY  
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# COMMERCIAL GENERAL LIABILITY DECLARATIONS

JAMES RIVER INSURANCE COMPANY  
6641 WEST BROAD STREET, SUITE 300  
RICHMOND, VA 23230

POLICY NUMBER  
00038296-0

**1. NAMED INSURED AND MAILING ADDRESS:**

DA Lewis Construction Inc  
P O Box 3009  
Ramona, CA 92065

PRODUCER: 20024

CRC Insurance Services, Inc. (Glendale)  
550 North Brand Boulevard, Suite 1990  
Glendale, CA 91203

**2. POLICY PERIOD:** From 06/07/2009 to 06/07/2010 12:01 A.M. Standard Time at your Mailing Address above.

**IN RETURN FOR THE PAYMENT OF THE PREMIUM, IN RELIANCE UPON THE STATEMENTS IN THE APPLICATION(S) AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**

<b>LIMITS OF INSURANCE</b>			
EACH OCCURRENCE LIMIT	\$	1,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$	50,000	Any one premises
MEDICAL EXPENSE LIMIT		Excluded	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$	1,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	\$	2,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$	2,000,000	

**RETROACTIVE DATE (CG 00 02 ONLY)**

THIS POLICY IS ON A CLAIMS-MADE AND REPORTED BASIS WHICH PROVIDES LIABILITY COVERAGE ONLY IF A CLAIM IS FIRST MADE AND REPORTED DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.

RETROACTIVE DATE: NONE

(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

**DESCRIPTION OF BUSINESS**

FORM OF BUSINESS: Corporation

BUSINESS DESCRIPTION: Commercial Awning Installation

<b>ALL PREMISES YOU OWN, RENT OR OCCUPY</b>	
LOCATION NUMBER 1	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY 706 Brazos St, Ramona, CA 92065

<b>CLASSIFICATION AND PREMIUM</b>							
<b>LOCATION NUMBER</b>	<b>CLASSIFICATION</b>	<b>CODE NO.</b>	<b>PREMIUM BASE</b>	<b>RATE \$</b>	<b>ADVANCE PREMIUM \$</b>		
1	Contractors - subcontracted work - in connection with construction, reconstruction, erection or repair - not buildings	91581	Included	Included	Included		
1	Tent or Canvas Goods - erection, removal or repair - away from shop	99709	\$600,000 Gross Sales	\$14.17	\$8,500.00		
			<b>TOTAL PREMIUM (SUBJECT TO AUDIT)</b>		\$ 8,500.00		
If checked, premium shown is flat and not subject to audit <input type="checkbox"/>			Inspection Fee		\$ 500.00		
<b>TOTAL SHOWN IS PAYABLE:</b>			<b>AT INCEPTION</b>		\$ 9,000.00		
AUDIT PERIOD (IF APPLICABLE)	FREQUENCY: Annual						

<b>ENDORSEMENTS</b>
ENDORSEMENTS ATTACHED TO THIS POLICY:
See attached schedule A – Schedule of Forms

**THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.**

## SCHEDULE A

FORMS AND ENDORSEMENTS THAT APPLY TO THIS POLICY:

**POLICY NO. 00038296-0**

<b>FORM NUMBER</b>	<b>DESCRIPTION</b>
MC0001US-0509	Commercial General Liability Declarations
AP0001US-0403	Schedule A
CG0001-1001	Commercial General Liability Coverage Form
AP0100US-0403	Privacy Policy
AP1007US-0705	Exclusion - Operations Covered by a Consolidated Insurance Program (Wrap-Up, OCIP, CCIP)
AP1013US-1005	Premium Audit Conditions Amended
AP2020US-1206	Exclusion - Occupational Disease
AP2029US-1105	Combined Policy Exclusions
AP2031US-1105	Insured Versus Insured - Exclusion
AP2032US-1108	Employers Liability - Exclusion
AP2034US-1106	Injury to Independent Contractors and Subcontractors - Exclusion
AP2036US-1105	Absolute Pollution and Pollution Related Liability - Exclusion
AP2056US-1206	Amendment of Insured Contract Definition
AP2103US-0607	Minimum Policy Premium
AP2104US-0208	Common Policy Conditions
AP2107US-0403	Binding Arbitration
AP2111US-1105	Exclusion - Punitive Damages
AP2112US-0804	Terrorism Exclusion
AP2117US-0205	Hot Work Endorsement
AP2300US-1106	Composite Rate Endorsement
AP5004US-1106	Waiver of Subrogation as Required by Contract
AP5012US-1203	Policy Limitation - Amended Aggregate Limits of Insurance per Project
AP5018US-0604	Exclusion - Work Performed in New York State
AP5025US-1004	Exclusion - Damage to Underground Facility
AP5027R-0107	Rejection of Coverage for Certified Acts of Terrorism Coverage (Pursuant to Terrorism Risk Insurance Act)
AP5031US-0507	Primary and Non Contributory Endorsement
CG0067-0305	Exclusion - Violation of Statutes that Govern E-mails, Fax, Phone Calls or Other Methods of Sending Material or Information
CG2010-0704	Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization
CG2037-0704	Additional Insured - Owners, Lessees or Contractors - Completed Operations
CG2136-0196	Exclusion - New Entities
CG2167-0402	Fungi or Bacteria Exclusion
GC2131US-0403	Fiduciary Exclusion
IL0021-0702	Nuclear Energy Liability Exclusion Endorsement (Broad Form)
IL1201-0403	Policy Changes
MC2105US-1005	Deductible Endorsement
MC2115US-0505	Designated Work Exclusion - Finish System
MC2120US-0403	Exclusion - Subsidence
MC2126US-1207	Premium Base Endorsement
MC2129US-0604	Roofing Endorsement
MC2139US-0403	Exclusion - Coverage C - Medical Payments
MC2151US-0908	Exclusion - Residential Development



**COMMERCIAL GENERAL LIABILITY**  
CG 00 01 10 01

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### **SECTION I – COVERAGES**

#### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## **2. Exclusions**

This insurance does not apply to:

### **a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### **b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### **c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### **d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### **e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or
- (ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### **g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

#### **j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

#### **l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### **m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1)** A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2)** A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

#### **n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1)** "Your product";
- (2)** "Your work"; or
- (3)** "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### **o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

### **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

#### **1. Insuring Agreement**

**a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1)** The amount we will pay for damages is limited as described in Section III – Limits Of Insurance ; and
- (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## **2. Exclusions**

This insurance does not apply to:

### **a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### **b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

### **c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

### **d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### **e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### **f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### **g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### **h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### **i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

### **j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1)** Advertising, broadcasting, publishing or telecasting;
- (2)** Designing or determining content of websites for others; or
- (3)** An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b. and c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### **k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**I. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**COVERAGE C MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
 provided that:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while taking part in athletics.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**h. War**

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.

- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

**SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
- (a) Owned, occupied or used by,
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### **SECTION III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage **C**;
  - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage **B**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**; and
  - b. Medical expenses under Coverage **C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

#### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b.** If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c.** You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

#### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section I – Coverage **A** – Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### **c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### **5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

#### **7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in a. above;
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.



**10.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

**11.** "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

**12.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

**15.** "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16.** "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**17.** "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**20.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**21.** "Your product":

- a. Means:
  - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (a) You;
    - (b) Others trading under your name; or
    - (c) A person or organization whose business or assets you have acquired; and
  - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - (2)** The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.**

**22. "Your work":**

**a. Means:**

- (1)** Work or operations performed by you or on your behalf; and
- (2)** Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2)** The providing of or failure to provide warnings or instructions.

## **James River Insurance Company Privacy Policy**

**We do not sell customer information to nonaffiliated third parties, and we do not share customer information with nonaffiliated third parties except those parties who perform contractual services for us, and parties to which we are authorized to provide information by law.** In addition, when we provide information to affiliates or non-affiliates, we limit those disclosures to information about your transactions and experiences with us and to disclosures otherwise permitted by law. You do not need to take any action to prevent us from selling or sharing information we obtain about you.

**We use security measures and training in our effort to protect the customer information we collect.** We protect the information we obtain about you by maintaining physical, electronic and procedural safeguards.

**We collect the following types of information about you when you purchase or use our products and services.** Most of the information that we obtain about you comes directly from you, such as through the insurance applications you submit when requesting insurance products. These applications and other inquiries we make of you allow us to learn information that we may use to contact you in the future, such as your name, address, telephone number and e-mail address. In addition, insurance applications and other information you provide enables us to determine the type and value of your insured property, the types of insurance coverages you have or in which you might be interested, and similar information.

If you visit an Internet site that we maintain, we might request or obtain information that will enable us to identify you as a registered user, such as your name, a user identification name, a password, password reminders, and your Internet service provider. We might use a "cookie" to retain some of this information. We also might obtain information about your operating system, web browser and similar information to enable us to improve the operation of our site.

When we consider products and services in which you may be interested, we often review information that we have about your past transactions with us or our affiliates, such as your existing or former policy coverages, premiums and payment history. In addition, we may learn information about your transactions with nonaffiliated third parties, including the types of products or services you obtained from them and your experiences with them. Finally, we may obtain other information from third parties that has a bearing upon your eligibility for the products or services you seek from us. This information may include your credit report or information about your creditworthiness, or other information maintained by consumer reporting agencies.

**We provide customer information only to our affiliates and to nonaffiliates that must protect your customer information.**

**We also may provide information as mentioned in this notice to nonaffiliated third parties that perform services for us or perform functions on our behalf, such as marketing and research, or to other financial institutions with which we have joint agreements for activities such as marketing. By law, our contracts with these parties must prevent them from using the information they receive about you except as described in this notice.**

Finally, we may share customer information as permitted by applicable law. This means that we will share information with parties as necessary to affect, administer, or enforce transactions that you request. For example, we might provide information to a company that processes, prints and mails our insurance policies to you, or to a company that adjusts claims under your policies. We also might disclose customer information to other entities specified by law, such as insurance advisory organizations, our attorneys and accountants, consumer reporting agencies, or civil and regulatory authorities. Federal law sets the limitations on these types of disclosures.

**We strive to keep our records as accurate as possible.** We attempt to maintain accurate records about you and we will gladly make appropriate corrections when you notify us. Of course, we do not control the accuracy of information gathered and provided by third parties, and you may need to notify third parties directly if you believe that any information we received from them is inaccurate. You may request the name and address of any consumer-reporting agency from which we obtain a report on you. You then may contact that consumer-reporting agency to request a copy of the report it makes or to advise of any changes to the information they maintain and report.

We will provide one copy of this Privacy Policy to joint contract holders. Please share this information with everyone covered under your policy or contract.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION –OPERATIONS COVERED BY A CONSOLIDATED INSURANCE PROGRAM (WRAP-UP, OCIP, CCIP)**

This endorsement modifies insurance provided under the following:

PRODUCTS COMPLETED OPERATIONS LIABILITY COVERAGE  
COMMERCIAL GENERAL LIABILITY COVERAGE

This insurance does not apply to any liability arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at any location where a Consolidated Insurance Program (CIP) in which you participate, commonly referred to as an Owner Controlled Insurance Program (OCIP), Contractor Controlled Insurance Program (CCIP) or Wrap-Up program, has been provided by the contractor, project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the Consolidated Insurance Program:

- (1) Provides coverage identical to that provided by this policy;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PREMIUM AUDIT CONDITIONS AMENDED

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE

**SECTION IV--COMMERCIAL GENERAL LIABILITY CONDITIONS**, Item 5. Premium Audit, is deleted and replaced with the following:

#### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request. We have the right, but not the obligation, to conduct a physical audit of records needed for premium computation after the expiration of this policy.
- d. Your refusal to maintain or provide needed records, or to allow us to conduct a physical audit of needed records, will result in our developing and calculating a final audit premium based on information available to us and without your cooperation. If final premium audits calculated without your cooperation result in additional premium, you are obligated to pay such additional premium.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – OCCUPATIONAL DISEASE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
COMMERCIAL EXCESS LIABILITY COVERAGE  
CONTRACTORS COMBINED LIABILITY POLICY

This insurance does not apply to:

- 1) any "bodily injury" to any insured's employee(s) arising from an "occupational disease(s);"
- 2) any "bodily injury" to any person or any claims by any person that they sustained "bodily injury" or the fear of sustaining "bodily injury" arising out of any contact with, handling of, inhalation, absorption or exposure to any environmental, chemical, or toxic agent or substance, including any dust or fumes there from, arising out of the insured's operations.

"Occupational disease(s)" means any physical or mental disease, condition or disability of any employee(s) of any insured arising out of the insured's operations or conditions of employment, including any disease, condition or disability from a repetitive operation or any contact with, handling of, inhalation, absorption or exposure to any environmental, chemical, or, toxic agent or substance including any dust or fumes there from arising out of the insured's operations.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMBINED POLICY EXCLUSIONS**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS

The following exclusions are added to this policy:

### **ABSOLUTE ASBESTOS, LEAD OR SILICA EXCLUSION**

Injury or damages, including any claim or suit, arising out of, resulting from, caused or contributed to by Asbestos, Lead or Silica is not covered under this policy, nor are any expenses nor any obligation to share damages with or repay anyone else who must pay damages from same in conjunction with occurrences arising or alleged to have arisen out of same, including but not limited to any:

- a. "Bodily injury", "personal and advertising injury", "property damage" or damages of any type, arising out of the inhalation, ingestion, physical exposure to, absorption of, or toxic substances of or from Asbestos, Lead or Silica in any form, or from any goods, products or structures containing same, or "property damage" or devaluation of property arising from any form of same; or
- b. Existence of Asbestos, Lead, or Silica, in any form, in occupancy or construction, or the manufacture, sale, transportation, handling, storage, disposal, or removal of same, or goods or products containing same; or
- c. Loss, cost, expense, fines and/or penalties arising out of any (1) request, demand, order, governmental authority or directive or that of any private party or citizen action that any insured, or others, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of Asbestos, Lead, or Silica, or (2) any litigation or administrative procedure in which any insured or others may be involved as a party in response to the effects or alleged effects of Asbestos, Lead, or Silica; or
- d. Supervision, instructions, recommendations, requests, warnings or advice given or which should have been given, as well as any costs, including but not limited to abatement, mitigation, removal, containment, treatment, detoxification, neutralization, or disposal of same or in any way responding to or assessing the effects of same; or
- e. Actual or alleged Asbestosis, Lead poisoning, Silicosis or any other similar condition.

This exclusion applies regardless of whether:

- a. Injury or damage claimed is included within the "products/completed operations hazard" of the policy; or
- b. An alleged cause for the injury or damage is the insured's negligent hiring, placement, training, supervision, retention, act, error or omission.

### **CLAIM(S) IN PROGRESS EXCLUSION**

- a. This policy does not apply to "bodily injury", "personal and advertising injury" or "property damage" which begins or takes place before the inception date of coverage, whether such "bodily injury", "personal and advertising injury" or "property damage" is known to an insured, even though the nature and extent of such damage or injury may change and even though the damage may be continuous, progressive, cumulative, changing or evolving, and even though the "occurrence" causing such "bodily injury", "personal and advertising injury" or "property damage" may be or may involve a continuous or repeated exposure to substantially the same general harm.

- b. All "property damage" to units of or within a single project or development, and arising from the same general type of harm, shall be deemed to occur at the time of damage to the first such unit, even though the existence, nature and extent of such damage or injury may change and even though the "occurrence" causing such "property damage" may be or involve a continuous or repeated exposure to substantially the same general harm which also continues or takes place (in the case of repeated exposure to the substantially the same general harm) during the policy term.

#### **DISCRIMINATION EXCLUSION**

Discrimination charges, of any kind, actual and alleged, are not covered under this policy, nor are any expenses or obligation to share damages with or repay another who must pay damages from same.

#### **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

Employment-Related Practices, regardless of allegations, are not covered under this policy nor are any expenses nor any obligation to share damages with or repay anyone else who must pay damages from same, including but not limited to:

- a. Refusal to employ any person or termination of employment of any person; or
- b. Any employment-related practices, policies, acts or omissions, including but not limited to coercion, demotion, evaluation, reassignment, discipline, defamation, harassment in any form, humiliation, or discrimination; or
- c. Consequential "bodily injury" or "personal and advertising injury" as a result of a. or b.

#### **CLASSIFICATION LIMITATION EXCLUSION**

The coverage provided by this policy applies only to those operations specified in the applications(s) for insurance on file with the Company and described under the description of operations or classification on the declarations of the policy.

#### **DAMAGES LIMITATION EXCLUSION**

Damages mean a monetary judgment, award, or settlement. Damages do not include:

- a. Civil or criminal fines, sanctions or penalties, whether imposed pursuant to statute or otherwise; or
- b. Judgments or awards arising from acts or omissions deemed uninsurable by law; or
- c. The restitution of consideration or expense paid to you for professional services rendered or which should have been rendered; or
- d. Disputed fees or any actual or alleged personal profit or advantage to which you are not legally entitled; or
- e. Equitable or non-pecuniary relief.

#### **DUTY TO DEFEND EXCLUSION**

Where there is no coverage under this policy, there is no duty to defend.

#### **PROFESSIONAL LIABILITY EXCLUSION**

Professional liability, malpractice, errors, omissions, or acts of any type including rendering or failure to render any type of professional service is not covered under this policy nor are any expenses nor any obligation to share damages with or repay anyone else who must pay damages from same, unless such coverage is specifically endorsed onto this policy.

**WAR RISK EXCLUSION**

If this policy includes a war exclusion, such exclusion is deleted and replaced with the following exclusion:

This Company shall not be liable for loss caused directly or indirectly by:

- a. Hostile or warlike action in time of peace or war, including any action in hindering, combating or defending against an actual, impending or expected attack by:
  - (1) Any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or
  - (2) Military, naval or air forces; or
  - (3) An agent of such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such hostile or warlike action by such a government, power, authority or forces.
- b. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **INSURED VERSUS INSURED – EXCLUSION**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

This insurance does not apply to “bodily injury”, “personal and advertising injury” or “property damage” or any other claim for damages brought by any insured covered by this policy against any other insured that has ownership interest in, is operated, controlled, or managed by or is a subsidiary of any such insured.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EMPLOYER'S LIABILITY – EXCLUSION

This endorsement modifies insurance provided under the following:

### ALL COVERAGE PARTS

The Employer's Liability exclusion under **SECTION I—2. Exclusions**, of this policy is deleted and replaced with the following:

This insurance does not apply to any claim, suit, cost or expense arising out of "bodily injury" to:

- a. Any employee of any insured arising out of and in the course of:
  - (1) Employment by any insured; or,
  - (2) Performing duties related to the conduct of any insured's business; or
- b. The spouse, child, parent, brother, sister or relative of that employee as a consequence of Paragraph a. above.

This exclusion applies:

- a. Whether any insured may be liable as an employer or in any other capacity; and/or
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury; and/or
- c. To liability assumed under any "insured contract".

Wherever the word "employee" appears above, it shall mean any member, associate, "leased worker", "temporary worker" or any person or persons loaned to or volunteering services to you.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **INJURY TO INDEPENDENT CONTRACTORS AND SUBCONTRACTORS – EXCLUSION**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

This insurance does not apply to “bodily injury”, “personal and advertising injury” or “property damage” sustained by any of “your” independent contractors/subcontractors, or any employee, “leased worker”, “temporary worker” or volunteer help of same.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ABSOLUTE POLLUTION AND POLLUTION RELATED LIABILITY – EXCLUSION**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

The following exclusion is added to this policy. If the policy already includes a pollution exclusion or a pollution-related exclusion, such exclusion(s) is(are) deleted and replaced with the following:

Pollution/environmental impairment/contamination is not covered under this policy, nor are any expenses nor any obligation to share damages with or repay anyone else who must pay damages from same in conjunction with occurrences arising out of or alleged to have arisen out of same. All liability and expense arising out of or related to any form of pollution, whether intentional or otherwise and whether or not any resulting injury, damage, devaluation, cost or expense is expected by any insured or any other person or entity is excluded throughout this policy.

This insurance does not apply to any damages, claim, or suit arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" including but not limited to any:

- a. "Bodily injury", "personal and advertising injury", "property damage", or damages for the devaluation of property, or for taking, use or acquisition or interference with the rights of others in or on property or air space, or any other type injury or expense; or
- b. Any loss, cost, expense, fines and/or penalties arising out of any (1) request, demand, order, governmental authority or directive or that of any private party or citizen action that any insured, or others, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess same, the effects of "pollutants", environmental impairments, contaminants or (2) any litigation or administrative procedure in which any insured or others may be involved as a party as a result of actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or placement of "pollutants", environmental impairments, or contaminants into or upon land, premises, buildings, the atmosphere, any water course, body of water, aquifer or ground water, whether sudden, accidental or gradual in nature or not, and regardless of when.

This exclusion applies regardless of whether:

- a. Injury or damage claimed is included within the "products-completed operations hazard" of the policy; or
- b. An alleged cause for the injury or damage is the insured's negligent hiring, placement, training, supervision, retention, act, error or omission.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

The following definition is added to the policy. If the policy already includes a definition of "pollutants" such definition is deleted and replaced with the following:

"Pollutants" mean any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleums, chemicals or "waste". "Waste" includes medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

# AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

## COMMERCIAL GENERAL LIABILITY COVERAGE

Name of Person(s) or Organization	Location(s) of Covered Operations
Blanket	

Paragraph **9.** of the **Definitions** Section is replaced by the following:

**9.** "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement with the person(s) or organization(s) shown in the schedule above and pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" to a third person or organization, is caused, in whole or in

part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MINIMUM POLICY PREMIUM**

This endorsement modifies and amends insurance provided under the following:

### **ALL COVERAGE PARTS**

This endorsement sets forth the minimum earned premium for the policy. The minimum earned premium for this policy is calculated in accordance with the following:

1. The minimum premium for the policy period is 100% of the total policy premium as shown on the policy declarations page plus any premium adjustment by endorsements and any additional premium developed by audit.
2. Audits that indicate a return premium will not reduce the minimum as stated in paragraph 1.
3. If the insured cancels this policy and the policy is not subject to audit, the return premium will be 90% of the unearned policy premium; however in no event will the Company retain less than **25%** of the minimum premium shown in paragraph 1. above.
4. If the insured cancels this policy and the policy is subject to audit, the earned premium will be determined by final audit, however in no event will it be less than **25%** of the minimum premium as described in paragraph 1. above.
5. If the Company cancels the policy for any reason, other than for non-payment of premium, then the insured will be returned the full amount of the unearned premium without any minimum premium restrictions.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMON POLICY CONDITIONS

All Coverage Parts in this policy are subject to the following Conditions.

### 1. CANCELLATION AND NON-RENEWAL

- A. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- B. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- C. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- D. Notice of cancellation will state the effective date of cancellation. The policy will end on that date.
- E. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata unless cancellation is due to non payment of premium, in which case the refund may be less than pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- F. If notice is mailed, proof of mailing will be sufficient proof of notice.

If we elect not to renew this policy, we shall mail written notice to the First Named Insured at the address shown in the Declarations. Such written notice of non-renewal shall be mailed at least 30 days prior to the end of the policy term.

### 2. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### 3. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

### 4. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this policy unless:

- A. There has been full compliance with all of the terms of this policy; and
- B. No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity the same be commenced within twelve (12) months next after discovery by the insured of the occurrence which gives rise to the claim, provided however, that if by the laws of the state within which this policy is issued each limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state. We will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance.

## 5. REPRESENTATIONS

By accepting this policy, you agree:

- A. The statements in the Declarations are accurate and complete;
- B. Those statements are based upon representations you made to us; and
- C. We have issued this policy in reliance upon your representations.

## 6. SERVICE OF SUIT

It is agreed that in the event of the failure of this Company to pay any amount claimed to be due hereunder, this Company will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon the Company's President, or his nominee, at the address shown on the Declarations page of this policy, and that in any suit instituted against any one of them upon this policy, this Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of this Company in any such suit and/or upon the request of the insured to give a written undertaking to the insured that it or they will enter a general appearance upon this Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provision therefore, this Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

## 7. TERMS, CONDITIONS AND PREMIUM

On each renewal, continuation, anniversary of the effective date of the policy or on an annual basis, the Company will determine the rate and premium and/or amend the terms and conditions in accordance with the rates and rules then in effect.

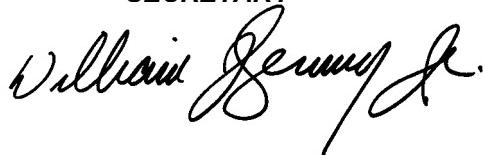
## 8. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

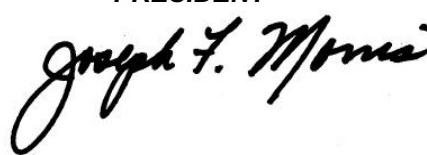
If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

In Witness Whereof, this Company has executed and attested these presents; but this policy shall not be valid unless signed by duly authorized representatives of this Company.

SECRETARY



PRESIDENT



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BINDING ARBITRATION**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

Should we and the insured disagree as to the rights and obligations owed by us under this policy, including the effect of any applicable statutes or common law upon the contractual obligations otherwise owed, either party may make a written demand that the dispute be subjected to binding arbitration.

When such a request is made, The American Arbitration Association shall be used, with each party selecting an arbitrator from the list of qualified arbitrators for insurance coverage disputes provided by that Association. The two chosen arbitrators shall select a third arbitrator from the same list; if they cannot agree to a selection, The American Arbitration Association shall make the selection for them. Each party shall bear the costs of its arbitrator and shall share equally the costs of the third arbitrator and of the arbitration process. A decision agreed to by two of the arbitrators will be binding.

In the event you prevail in the arbitration and we promptly offer to you arbitration costs and reasonable attorney fees incurred in connection therewith, in addition to the disputed contract benefit, you shall have no right to sue us for breach of implied covenants or unreasonable withholding of contract benefits.

To the extent that we prevail in the arbitration, the arbitrators may award us any expenses and/or damages incurred or paid under reservation of rights in excess of our contract obligations as determined by the arbitrators.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – PUNITIVE DAMAGES**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

COMBINED POLICY EXCLUSIONS, DAMAGES LIMITATION EXCLUSION is deleted in its entirety and replaced with the following:

Damages mean a monetary judgment, award, or settlement. Damages do not include:

- a. Civil or criminal fines, sanctions or penalties, whether imposed pursuant to statute or otherwise; or
- b. Judgments or awards arising from acts or omissions deemed uninsurable by law; or
- c. The restitution of consideration or expense paid to you for professional services rendered or which should have been rendered; or
- d. Disputed fees or any actual or alleged personal profit or advantage to which you are not legally entitled; or
- e. Punitive or exemplary damages and the multiplied portion of multiplied damages; or
- f. Equitable or non-pecuniary relief.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TERRORISM EXCLUSION**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

The coverage under this policy does not apply to any loss, injury, claim or damage arising directly or indirectly out of or relating to:

1. Any act of "terrorism"; or
2. Any action authorized by a government authority or agency for the purpose of preventing or minimizing the consequences of any act or threat of "terrorism".

"Terrorism" means an activity by an individual acting alone, or individuals acting as a part of a group, that involves any violent act, including the threat of any activity or preparation for an activity that:

1. Causes either:
  - a. Damage to property;
  - b. Injury to person(s); or
  - c. Loss of income or increased expense; and
2. Appears to be intended to:
  - a. Intimidate or coerce a civilian population;
  - b. Disrupt any segment of an economy;
  - c. Influence the policy of a government by intimidation or coercion;
  - d. Affect the conduct of a government by destruction, assassination, kidnapping or hostage-taking; or
  - e. Advance a political, religious or ideological cause; or
3. Involves the use, release, dispersal, discharge, escape or application of:
  - a. Nuclear materials, or directly results in nuclear reaction or radiation or radioactive contamination; or
  - b. Pathogenic or poisonous biological or chemical materials.

"Terrorism" shall also include any incident determined to be such by any official, department or agency that has been specifically authorized by federal statute to make such a determination.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **HOT WORK ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE**

This insurance does not apply to any "bodily injury", "property damage" or "personal and advertising Injury" arising out of:

1. Your failure to provide "appropriate" supervision, safeguards or monitoring, or, your failure to have emergency fire suppression equipment on hand, during and up to one hour after performing any operations involving "hot work."

The term "appropriate" as used here means actions customarily and normally taken or used by similar contractors in the same field under similar circumstances in the job-site jurisdiction to protect or prevent damage, including compliance with all applicable codes or regulations.

"Hot work" means any cutting, brazing, grinding or other similar activity or operation that generates sparks, flames or heat capable of causing combustion.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMPOSITE RATE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

The premium stated in the declarations of this Policy is an estimated premium only. Upon expiration of the policy, the earned premium shall be computed by applying a rate of:

\$14.17      per      \$1,000      of      Gross Sales

If the earned premium thus computed exceeds the estimated premium paid, you shall pay the excess to us.

It is understood that a complete re-survey of the exposures and revision of rate may be made at any time at our request. You agree to notify us at any time exposures change or your operation changes.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF SUBROGATION AS REQUIRED BY CONTRACT**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

The Company agrees to waive any right of recovery against any person or organization, as required by written contract, because of payments we make for injury or damage which is limited to liability directly caused by "your work" which is imputed to such person or organization.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **POLICY LIMITATION – AMENDED AGGREGATE LIMITS OF INSURANCE PER PROJECT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS COMBINED LIABILITY POLICY

SECTION III – LIMITS OF INSURANCE - The General Aggregate Limit applies separately to each “Project” of the Named Insured.

Notwithstanding the application of the General Aggregate Limit to each “Project” of the Named Insured, under no circumstances will we pay more than **\$10,000,000** for all claims under this policy that are subject to the General Aggregate limit.

For the purpose of this endorsement, the following definition is added:

“Project” means all work done by you or on your behalf, away from premises owned or rented to you, to complete an individual bid or negotiated contract to provide services for a specified period of time. Multiple jobs, work orders, purchase orders, or work done at multiple “locations” under one contract are not separate “projects” within the meaning of this coverage.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION - WORK PERFORMED IN NEW YORK STATE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
COMMERCIAL EXCESS LIABILITY

This insurance does not apply to any claim for "bodily injury", "property damage", or "personal and advertising injury" arising out of any work performed in the State of New York by or on behalf of any insured.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – DAMAGE TO UNDERGROUND FACILITY**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

This coverage does not apply to any “underground property damage” arising out of the failure to take “appropriate” steps, in advance of any job or work commencing, to locate, identify or mark any “underground facility.”

For purposes of this exclusion, the following definitions apply:

“Underground property damage” means “property damage” to an “underground facility,” including any resulting “property damage” to any other property, caused by you or others on your behalf for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving.

“Appropriate” means actions normally taken or used in the job site jurisdiction to locate, identify and mark “underground facilities” to protect or prevent damage, including compliance with all applicable state or local codes or regulations.

“Underground facility” means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances, and, including but not limited to pipes, sewers, conduits, mains, cables, valves, lines, wires, tanks, tunnels, manholes, attachments, and any other similar property, and, any apparatus used with them beneath the surface of the ground or water.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

**REJECTION OF COVERAGE  
FOR CERTIFIED ACTS OF TERRORISM COVERAGE  
(PURSUANT TO TERRORISM RISK INSURANCE ACT)**

**SCHEDULE**

**THE INSURED WAS OFFERED AND**

**HAS DECLINED TERRORISM COVERAGE ON THIS POLICY**

In accordance with the federal Terrorism Risk Insurance Act, this notice confirms that you were offered and have rejected coverage for terrorist acts certified under that Act.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NON CONTRIBUTORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

Any coverage provided to an Additional Insured scheduled in endorsement CG 2010 or endorsement CG 2037 (when either is attached to this policy) shall be excess over any other valid and collectible insurance available to such Additional Insured whether primary, excess, contingent or on any other basis unless:

- 1) a written contract or written agreement specifically requires that this insurance apply on a primary and noncontributory basis; or
- 2) prior to a loss, you request in writing and we agree that this insurance shall apply on a primary and non-contributory basis.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

COMMERCIAL GENERAL LIABILITY  
CG 00 67 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
As required by written contract	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

**COMMERCIAL GENERAL LIABILITY**  
CG 20 37 07 04**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Opera- tions
As required by written contract	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**COMMERCIAL GENERAL LIABILITY  
CG 21 36 01 96**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – NEW ENTITIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph **4.** of **Section II, WHO IS AN INSURED** does not apply.



COMMERCIAL GENERAL LIABILITY  
CG 21 67 04 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability:****

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for consumption.

- B. The following exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage B – Personal And Advertising Injury Liability:****

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

- C. The following definition is added to the **Definitions** Section:**

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FIDUCIARY EXCLUSION**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

This policy does not apply to any claim arising out of the:

1. Coercion, conversion or misappropriation of others' funds or property;
2. Any dishonest, fraudulent, criminal, malicious acts or omissions of the insured, partner or employee or any person for whom you are legally responsible; or
3. Any activities or operations performed in the capacity of a fiduciary.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

IL 00 21 07 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 PROFESSIONAL LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
  - C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
    - (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
    - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
    - (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

**2. As used in this endorsement:**

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

**(c)** Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

**(d)** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **POLICY CHANGES**

POLICY NUMBER  00038296-0	POLICY CHANGES EFFECTIVE  6/7/2009 12:01 AM Standard Time at the address of the Named Insured	COMPANY  JAMES RIVER INSURANCE COMPANY
NAMED INSURED  DA Lewis Construction Inc	AUTHORIZED REPRESENTATIVE  Joseph F. Morris	
<b>COVERAGE PARTS AFFECTED</b> <b>ALL COVERAGE PARTS</b>		
<b>INDEPENDENT CONTRACTORS AND SUBCONTRACTORS LIMITATION</b>		

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS

Coverage provided under this policy for "bodily injury", "personal and advertising injury" or "property damage" caused by acts of independent contractors/subcontractors contracted by you or on your behalf shall not apply unless at the time "bodily injury", "personal and advertising injury" or "property damage" occurs:

- 1) the independent contractor/subcontractor contracted by you or on your behalf:
  - a. maintains insurance coverage and limits of insurance equal to or greater than the insurance coverage and limits of insurance provided by this policy; and
  - b. provides you with an endorsement or certificate indicating that you have been added to the independent contractor's/subcontractor's policy as an Additional Insured; and
- 2) the contracts with the independent contractors/subcontractors you have hired contain hold harmless or indemnity agreements in your favor, indemnifying you against any losses arising from work performed for you or on your behalf by such independent contractors/subcontractors.



Authorized Representative Signature

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DEDUCTIBLE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage	SCHEDULE	Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE
Bodily Injury Liability	\$	\$
OR		
Property Damage Liability	\$	\$
OR		
Personal & Advertising Injury	\$	\$
OR		
Damage To Premises Rented To You	\$	\$
OR		
Medical Payments	\$	\$
OR		
Bodily Injury Liability and/or Property Damage Liability and/or Personal & Advertising Injury Liability, and/or Damage To Premises Rented To You and/or Medical Payments Combined	\$ 2,500	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury", "property damage" or "personal and advertising injury" or medical expenses however caused):

- A. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and/or Advertising Injury, Medical Payments or any other coverages provided by this policy to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages. The deductible amounts stated above will include loss payments, adjustments, investigative and legal fees and costs, all whether or not loss payment is made.
- B. We may select a deductible amount on either a per claim or a per "occurrence" basis. Our selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
  - 1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
    - a) Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
    - b) Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage";

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

- c) Under Personal & Advertising Injury Liability, to all damages sustained by any one person or organization because of "personal and advertising injury";
- d) Under Damage To Premises Rented To You, all damages to any one premises while rented to you, because of "property damage";
- e) Under Medical Payments, to all medical expenses sustained by any one person; or
- f) Under Bodily Injury Liability and/or Property Damage Liability and/or Personal & Advertising Injury Liability, and/or Damage To Premises Rented To You, and/or Medical Payments Coverages Combined, to all injury, damage and medical expenses sustained by any one person or organization

as the result of any one "occurrence" or "offense".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage", "person" includes an organization.

**2. PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a) Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b) Under Property Damage Liability Coverage, to all damages because of "property damage";
- c) Under Personal & Advertising Injury Liability, to all damages because of "personal and advertising injury";
- d) Under Damage To Premises Rented To You, all damages to any one premises while rented to you, because of "property damage";
- e) Under Medical Payments, to all medical expenses because of an accident; or
- f) Under Bodily Injury Liability and/or Property Damage Liability and/or Personal & Advertising Injury Liability, and/or Damage To Premises Rented To You, and/or Medical Payments Coverages Combined, to all injury, damage and medical expenses

as the result of any one "occurrence" or "offense", regardless of the number of persons or organizations who sustain damages because of that "occurrence" or "offense".

**C.** The terms of this insurance, including those with respect to:

1. Our right and duty to defend any "suits" seeking those damages; and
  2. Your duties in the event of an "occurrence," claim, or "suit"
- apply irrespective of the application of the deductible amount.

**D.** We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED WORK EXCLUSION – FINISH SYSTEM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
CONTRACTORS COMBINED LIABILITY POLICY

The coverage under this policy does not apply to any claim for "bodily injury" or "property damage" included in the "products-completed operations hazard" arising out of "your work" involving:

1. The design, manufacture, construction, fabrication, preparation, installation, application, maintenance, repair, or removal, including remodeling, service, correction or replacement of any spray on siding, elastomeric coating, elastomeric texture coating, elasto-polymer, multi-polymer, ceramic microsphere filled coating system, texture coatings, ceramic texture, ceramic siding, liquid siding, liquid wall coverings, or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulks or sealants in connection with such system; or
2. Any work or operations with respect to any exterior or internal component, fixture or feature of any structure if any exterior or interior finish system is used on any part of that structure.

This exclusion does not apply to "your work" on roofs.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION - SUBSIDENCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This policy does not apply to any liability for "Bodily Injury", "Personal and Advertising Injury", or "Property Damage", or to loss of, damage to, or loss of property, directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the subsidence, settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, bulging, cracking, shrinking or expansion of foundations, walls, roofs, floors, or ceilings, or any other movements of land or earth, regardless of whether the foregoing emanates from, or is attributable to, any operations performed by or on behalf of any insured. The foregoing applies regardless of whether the first manifestation of same occurs during the policy period or prior or subsequent thereto.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PREMIUM BASE ENDORSEMENT**

One or more of the following symbols may be entered under the Premium Base column of the Declarations. These symbols designate the base used for determining your premium. The following is a definition of these symbols when used as a premium base.

### **Symbol Definition**

**"Area"** means: The total number of square feet of floor space at the insured premises, computed as follows:

For entire buildings, by multiplying the product of the horizontal dimensions of the outside of the outer building walls by the number of floors, including basements but do not use the area of the following:

1. Courts and mezzanine types of floor openings.
2. Portions of basements or floors where 50% or more of the area is used for shop or storage for building maintenance, dwelling by building maintenance employees, heating units, power plants or air-conditioning equipment.
3. For tenants, determine the area they occupy in the same manner as for the entire buildings.

The rates apply per 1,000 square feet of area.

### **"Total Cost"** means:

The total cost of all work let or sublet in connection with each specific project including:

1. The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work.
2. All fees, bonuses or commissions made, paid or due.

The rates apply per \$1,000 of total cost.

### **"Admissions"** means:

The total number of persons, other than employees or the named insured, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per admission.

### **"Payroll"** means:

1. Remuneration which includes money or substitutes for money.
2. Payroll includes:
  - a. Commissions, bonuses, pay for holidays, vacations or periods of illness;
  - b. Extra pay for overtime.
  - c. Payments by an employer or amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as Federal Social Security Act;

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

- d. Payment to employees on any basis other than time worked, such as piece work, profit sharing or incentive plans;
  - e. Payment or allowance for hand tools or power tools used by hand provided by employees and used in their work or operations for the insured;
  - f. The rental value of an apartment or a house provided for an employee based on comparable accommodations;
  - g. Value of meals and lodging other than an apartment or house received by employees as part of their pay;
  - h. The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay;
  - i. The payroll of all drivers, mobile equipment operators and their helpers, whether or not the operators are designated or licensed to operate automobiles. If the operators and their helpers are provided to the insured along with equipment hired under contract and their actual payroll is not known, use 1/3 of the total amount paid out by the insured for the hire of the equipment;
  - j. The payroll of executive officers and individual insureds and co-partners;
  - k. Fees paid to employment agencies for temporary personnel provided to the insured;
1. Payroll does not include:
- a. Tips and other gratuities received by employees;
  - b. Payments by an employer to group insurance or group pension plans for employees in accordance with the manuals in use by us;
  - c. The value of special rewards for individual invention or discovery;
  - d. Dismissal or severance payments except for time worked or accrued vacation;

The rates apply per \$1,000 of payroll.

**"Gross Sales" or "Receipts" means:**

1. The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's name for:
  - a. All goods or products, sold or distributed;
  - b. Operations performed during the policy period;
  - c. Rentals; and
  - d. Dues or fees.
2. Inclusions  
The following items shall not be deducted from gross sales:
  - a. Foreign exchange discounts;
  - b. Freight allowance to customers;
  - c. Total sales of consigned goods and warehouse receipts;
  - d. Trade or cash discounts;
  - e. Bad debts; and
  - f. Repossession of items sold on installments (amount actually collected.)
3. Exclusions  
The following items shall be deducted from gross sales:
  - a. Sales or excise taxes which are collected and submitted to a governmental division;
  - b. Credits for repossessed merchandise and products returned.
  - c. Allowances for damaged and spoiled goods;
  - d. Finance charges for items sold on installments;
  - e. Freight charges on sales if freight is charged as a separate item on customers invoice; and

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

f. Royalty income from patent rights or copyrights which are not product sales.

The rates apply per \$1,000 of gross sales.

**"Each" means:**

The basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the Declarations such as "per acre."

The rates apply per unit of exposure.

**"Unit" means:**

A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone.

The rates apply per each unit.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ROOFING ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE

The coverage under this policy does not apply to:

1. Your failure to take "appropriate" steps in advance of any job or work commencing to determine the weather expected by your local weather bureau for that period of time you will be working on any given day, in order to preclude any open roof during any wind, hail, snow, rain, ice or any combination of these; and
2. Your having any "open roof" when any weather in 1. above occurs;
3. Your failure to provide "appropriate" temporary covering, able to withstand the elements, in advance of any precipitation and in advance of your leaving the job for ANY period of time; or
4. Your failure to provide "appropriate" supervision, monitoring, and emergency fire suppression equipment on hand, during and up to one hour afterward when performing any operations involving any hot tar, wand, open flame, torch or heat applications.

The term "open roof" as used here shall include any roof or section of roof where shingles, tar, felt paper, and any other protective covering has been removed, thereby leaving exposed any supporting structure, decking, building interior or contents of any building to the elements;

The term "appropriate" as used here means actions customarily and normally taken or used by similar contractors in the same field under similar circumstances in the job-site jurisdiction to protect or prevent damage, including compliance with all applicable codes or regulations.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – COVERAGE C – MEDICAL PAYMENTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**ALL PREMISES AND CLASSIFICATIONS**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown  
in the Schedule:

1. Section I – Coverage C – Medical Payments  
does not apply and none of the references to it  
in the Coverage Part apply.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – RESIDENTIAL DEVELOPMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. "your work" or "your product" related to any development, reconstruction, rebuilding, restoration, renovation, remodeling, repair, upgrading, improvement, refurbishing or construction of any "residential development"; provided however that this exclusion shall not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of "your work" or "your product" related to any "apartment(s)" or "apartment building(s)"; or
2. "your work" or "your product" related to any "residential development" involving the remodeling or conversion of any existing "apartment(s)", "apartment building(s)", commercial or industrial building to a residential condominium, a residential townhome or that portion of any "mixed-use building" that is designed or intended to be a non-rental residential unit. This exclusion applies whether or not the remodeling or conversion is conducted by you or on your behalf or conducted by an unrelated party.

"Residential development" means any structure(s), including the land upon which it is situated, designed or intended for occupancy in whole or in part as a residence by any person or persons.

"Apartment(s)" mean one or more rooms of a building used as a dwelling unit separate from others in the building, and which are rented from others by those dwelling in them.

"Apartment building(s)" means a structure containing two or more separate "apartments".

"Mixed-use building" means structures, including improvements to them, which contain both non-rental residential units and commercial space.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

James River Insurance Company

(b) County of Residence of First Listed Plaintiff Henrico, VA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan B. Cole, Nemecek & Cole, 15260 Ventura Blvd. #920,  
Sherman Oaks, CA 91403 (818) 788-9500**DEFENDANTS**ERICKSON-HALL CONSTRUCTION CO., D.A. LEWIS  
CONSTRUCTION, INC.; CITY OF CHULA VISTA; MT.County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**'10CV2550 DMS BGS****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                        |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

- |   |                                |                                |   |                                       |   |
|---|--------------------------------|--------------------------------|---|---------------------------------------|---|
| Citizen of This State                   | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> PTF 4        | <input checked="" type="checkbox"/> DEF 4 |
| Citizen of Another State                | <input type="checkbox"/> 2     | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5                |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3     | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6                |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 510 Occupational Safety/Health	<input type="checkbox"/> 510 Occupational Safety/Health
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 520 Other	<input type="checkbox"/> 520 Other
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL PROPERTY</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<b>Habeas Corpus:</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 540 Mandamus & Other		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<b>IMMIGRATION</b>	
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. § 1332(a)(1)****VI. CAUSE OF ACTION**Brief description of cause:  
**Rescission and Declaratory Relief (Insurance Coverage)****VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/13/2010

/s/ Jonathan B. Cole

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.